(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to meet the developmental schedule, in accordance with the procedures in §1902.17 of this chapter on rejection of State plans.

(e) The Assistant Secretary shall review a supplement in the context of the entire plan to see whether it meets the assurances provided in the plan for an ''at least as effective'' program and whether there is a reasonable expectation that the plan will meet the requirements of the Act and the criteria in part 1902 within the three year developmental period. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets these requirements.

(f) If a timely request is submitted by the State, a final decision on a developmental change supplement will, to the extent practicable, be made no later than 60 days after the close of the period for written public comment or a hearing, whichever is relevant, unless the Assistant Secretary determines that the change is minor. The Assistant Secretary may defer publication of minor changes until the end of each full year of operations under the plan. The deferral of publication would not be appropriate where the change under consideration included a failure to meet a developmental step.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5629, Feb. 14, 1974]

Subpart C—Federal Program Change Supplements

SOURCE: 39 FR 32905, Sept. 12, 1974, unless otherwise noted.

§ 1953.20 Definitions.

When the Assistant Secretary determines that any alteration in the Federal program could have an adverse impact on the ''at least as effective as'' status of the State program, a program change supplement to a State plan shall be required. Examples of Federal program changes that would require a supplement include promulgation or modification of standards, including emergency temporary standards; revisions in enforcement policies or procedures; and legislative or regulatory changes in the Federal program, including recordkeeping and reporting requirements. A Federal program change that would either not affect or that would result in no diminution of the effectiveness of a State plan, generally would not require action by the States.

§ 1953.21 Standards supplements.

(a)(1) In accordance with section 18(c) of the Act, §1902.3(c)(1) and (2) and §1902.4(b)(2)(i) through (vii) of this chapter, and the assurances contained in an approved plan, each State has agreed that its standards, including emergency temporary standards, will continue to be identical to or at least as effective as Federal standards promulgated under section 6 of the Act relating to issues covered by the approved plan. The requirement to be at least as effective includes promulgation of new standards as well as modifications, revisions, or revocations of existing standards. Since a State may include standards in addition to Federal standards within an issue covered by an approved plan. It would generally not be necessary for a State to revoke a standard when the comparable Federal standard is revoked and no substitute Federal standard is promulgated.

(2) However, in the case of product standards where section 18(c)(2) of the Act requires that State plans meet certain tests before more stringent standards can be adopted or retained by the States, the modification, revision, or revocation of the Federal product standards would necessitate the modification, revision, or revocation of the comparable State standard unless the State product standard is required ''by compelling local conditions and [does] not unduly burden interstate commerce.'' (See 29 CFR 1952.7).

(b) The procedures in §1953.22 are applicable to the submission of emergency temporary standards. The procedures in §1953.23 of this subpart apply to submission of supplements for permanent standards as well as to other Federal program changes. When an emergency temporary standard is adopted as a permanent standard the procedure in §1953.23 is applicable.

§1953.22 Emergency temporary standards.

(a)(1) Immediately upon publication of an emergency temporary standard in the FEDERAL REGISTER, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of the standard and the reason why a Federal program change supplement shall be required. The notification shall also provide that the State has 30 days after the effective date of the Federal standard to adopt, under the emergency procedures contained in the plan as required under §1902.4(a)(1) or (b)(2)(v) of this chapter, a State emergency temporary standard if the State plan covers that issue.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard from the Regional Administrator, the State shall advise the Assistant Regional Director, of the action it will take. The State should advise whether:

(i) It plans to adopt the Federal standard,

(ii) It plans to adopt an ''at least as effective as'' State standard,

(iii) The State has an existing standard that is at least as effective,

(iv) The Federal standard is not within an issue covered by the State plan, or

(v) The State wants to exclude the issue as defined in 29 CFR 1902.2(c) from the plan, which shall be considered as a request for an advisory opinion under subpart F of this part as to the separability of that issue.

(3) The State shall also include an estimated date of promulgation generally not to exceed 30 days as set out in paragraph (a) of this section. Where the date will exceed 30 days the State shall include a date and the reason why a greater period of time is needed under State law.

(4) The State may also request a finding from the Regional Administrator that there is good cause why the State is not required to adopt the standard on an emergency basis. The request must be supported by relevant data as provided under §1902.2(c)(2) and (3) of this chapter to show that there is no occupational exposure to the hazard within the State such as to warrant an emergency standard. The provisions in paragraph (b) of this section will be applicable to such a request. The application of this paragraph to emergency temporary standards does not mean that a permanent standard would not be required to be promulgated by the State.

(b)(1) The emergency temporary standard when required under paragraph (a) of this section, shall be submitted to the Regional Administrator within 5 days following its adoption by the State. The Assistant Regional Director shall review the supplement and if examination discloses that the State standard is identical to or at least as effective as the comparable Federal standard, the Regional Administrator shall, within a reasonable time generally not to exceed 20 days, publish a notice to that effect approving the State change.

(2) If examination discloses that the State standard is not at least as effective as the comparable Federal standard, or that the period of time for promulgation which is longer than 30 days is not warranted under paragraph (a)(3) of this section, the Regional Administrator shall immediately notify the State of such findings and of an opportunity to cure such defect or show cause why the State temporary emergency standard should not be rejected. Within a reasonable time, generally not to exceed 20 days from the date of such notification, the Regional Administrator shall cause to be published in the FEDERAL REGISTER a notice approving or rejecting the State standard, whichever is appropriate. Where the State has not taken the opportunity to show cause why the standard should not be rejected, the notice of rejection shall have immediate effect. Where the State has presented arguments and data for approval of the standard and